

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Rafael Rodriguez

v.

Case No. 15-cv-11-JL

Warden, Northern New Hampshire
Correctional Facility

REPORT AND RECOMMENDATION

Rafael Rodriguez, an inmate at the Northern New Hampshire Correctional Facility ("NCF"), has filed a petition for a writ of habeas corpus (doc. no. 1) under 28 U.S.C. § 2254, and an addendum to that petition (doc. no. 3). The petition is before the court for an initial review to determine whether it is facially sufficient to proceed. See Rules Governing Section 2254 Cases in the United States District Courts, Rule 4.

Discussion

In his petition, Rodriguez complains that he is not receiving a medically necessary gluten-free diet at the prison. Such allegations may give rise to civil rights claims concerning the conditions of Rodriguez's confinement, but do not form the

basis for a federal habeas action challenging the fact or duration of that confinement. See Wilkinson v. Dotson, 544 U.S. 74, 78-79 (2005) (explaining that habeas petitions filed pursuant to 28 U.S.C. § 2254 are the appropriate means of seeking release from unlawful confinement, while an action under 42 U.S.C. § 1983 is the appropriate means of attacking the constitutionality of conditions of confinement); Preiser v. Rodriguez, 411 U.S. 475, 489-99 (1973).

Rodriguez's claim is appropriately considered in a civil rights action under 42 U.S.C. § 1983. Accordingly, the district judge should dismiss the habeas petition (doc. no. 1) without prejudice to Rodriguez's ability to raise his claims in a new civil rights action.

Conclusion

For the foregoing reasons, this action should be dismissed in its entirety, without prejudice to Rodriguez's ability to raise the claims therein in a civil rights action. Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). Failure to file objections within the specified time waives the right to appeal the district court's order. See United States v. De Jesús-Viera, 655 F.3d 52, 57

(1st Cir. 2011); Sch. Union No. 37 v. United Nat'l Ins. Co., 617
F.3d 554, 564 (1st Cir. 2010).



Andrea K. Johnstone
United States Magistrate Judge

May 21, 2015

cc: Rafael Rodriguez, pro se